tered. We might add that the father did not entirely agree to the termination of the marriage. His personality was as strong, if not stronger, than his daughter's and as we have said it was he who took an active part in attempting to get the marriage registered and in insisting on the validity of the marriage. We sympathised with and understood his feelings as a father but we felt that in this case the interests of the community as a whole should take precedence over the personal feelings of the father. We felt it was unreal to insist on the continuance of a marriage which could not be consummated and to make it impossible for the girl in this case, to marry the man she loved. We would have felt it our duty, if the husband had insisted on his rights in this case, to assist the wife to take steps to terminate the marriage but we were glad that the matter was resolved by the agreement of the husband to give his wife a *khula* divorce and in so doing in the words of the Holy Quran to "set her free with kindness" (*Surah* II Verse 231).

Appeal allowed.

Re CHOP TIN JUI PHONG

[O.Bk.J. (Hepworth J.) September 22, 1958]

[Malacca — In Bankruptcy No. 9 of 1958]

Bankruptcy — Notice — Final Judgment — Settled list of debtors — Whether constitutes final judgment against person whose name and amount of his debt appearing therein — Bankruptcy Ordinance (S.S. Cap. 45), ss. 3(1)(i) and 32.

The fact that a person's name and the amount of his debt appear among the settled list of persons indebted to a debtor under section 32 of the Bankruptcy Ordinance (S.S. Cap. 45) does not constitute it a final judgment within the meaning of section 3(1)(i) of the Ordinance.

The provisions of section 3(1)(i) of the Bankruptcy Ordinance must be strictly construed in favour of the debtor and ought not to be held applicable except in a case which is manifestly within the words of the clause.

Case referred to:

(1) *In re a Bankruptcy Notice* (1907) 1 K.B. 478.

BANKRUPTCY.

Joginder Singh (Asst. Official Assignee) for the Official Assignee.

Managing partner of the Chop in person.

Cur. Adv. Vult.

Hepworth J.: Section 3(1)(i) of the Bankruptcy Ordinance (Cap. 45) provides that it is an act of bankruptcy if a debtor fails to comply with a bankruptcy notice served on him by a creditor who has obtained a final judgment against him in respect of which execution has not been stayed. The Official Assignee in this case argues that by virtue of the provisions of section 32 of the Ordinance, where a person's name appears among a list of persons indebted to a debtor and such person and the amount of his debt are settled on such list in accordance with the provisions of that section, then the fact of such person and the amount of his debt being settled on such list constitutes a final judgment in respect of that debt for the purposes of section 3(1)(i) of the Ordinance because section 32(3) of the Ordinance provides that execution may issue against the debtor for the amount set opposite his name in such list in the same way as if judgment had been entered up against him for such amount in favour of the Official Assignee.

In *In re a Bankruptcy Notice,* (1) Vaughan Williams, L.J. stated "there are several authorities in which it has been laid down that section 4, sub-section (1)(g), of the Bankruptcy Act, 1883, ought to be construed strictly, and ought not to be held applicable except in a case which is manifestly within the words of the clause.' The provisions of section 3(1)(i) of the Bankruptcy Ordinance are substantially similar to the provisions of section 4(1)(g) of the Act and accordingly must be construed strictly. In that case a creditor had asked that a Bankruptcy Notice might be issued upon a judgment obtained in pursuance of an order purporting to be made under section 12 of the Arbitration Act, 1889. This section provided that "an award on a submission may by leave of the Court or a Judge be enforced in the same manner as a judgment or order to the same effect." It was held that all that was done by section 12 was to give to the successful party under the award the right to enforce it as if it were a judgment, and that such a case did not fall within section 4(1)(g) of the Act. Section 12 of the Act did not give power to turn such an award into a judgment. It gave to the award the same status as a judgment for the purpose of enforcement, but it left it what it was before, that is an award.

It seems to me that the intention and effect of section 32 of the Ordinance is similar to that of section 12 of the Arbitration Act, 1889. In the same way as the latter section merely gives to the award the same status as a judgment for the purpose of enforcement, but leaves it what

it was before, an award, so the former section does not give power to turn the debt appearing in the settled list into a judgment but merely gives the Official Assignee power to issue execution for the amount of the debt appearing in the settled list, as if judgment had been entered for such amount in favour of the Official Assignee, but leaves the debt what it was before, that is a debt and nothing more. The settling of a person's name and the amount of his debt upon a list of debtors under section 32 of the Ordinance does not therefore constitute a final judgment for the purposes of section 3(1)(i) of the Ordinance.

S. AYADURAI v. LIM HYE

[O.C.J. (Ismail Khan J.) April 18, 1959]

[K.L.—Civil Suit No. 407 of 1957]

Contract — Sale of land — Initial deposit pending sub-division — Stipulation as to time for subsequent deposit of total balance — Failure of purchaser to deposit balance at or before expiration of notice — Default not wilful — Time not essence of contract — Contracts (Malay States) Ordinance, 1950, s.56(1).

Vendor and Purchaser — Contract for sale of defined portion of vacant land — Completion after two weeks' notice by vendor of issue of registered title — Express stipulation for forfeiture of initial deposit on failure to deposit total balance purchase price at or before expiration of notice — Default not wilful — Tender of balance by way of further deposit within reasonable time — Whether vendor entitled to forfeit initial deposit.

Sale of land — Specific performance — Stipulation for forfeiture on default — Default not wilful — Purchaser's right to specific performance.

This action arose out of an agreement made in 1955 whereby the defendant agreed to sell and the plaintiff agreed to purchase a defined portion of land upon sub-division thereof for the sum of $7,150 upon certain terms and conditions. A sum of $3,650 was deposited with the defendant initially. Clause 2 of the agreement provides: "On the issue of new titles in respect of Lot No. 1 the vendor shall execute in favour of the purchaser or his nominee a registrable memorandum of transfer of the land comprised in the said Lot No. 1 on payment to the vendor's Solicitors of the balance of Dollars Three thousand five hundred ($3,500) due for the said lot. Provided always that if the purchaser does not deposit the balance of $3,500 with the vendor's Solicitors within fourteen (14) days of the receipt of notice from the vendor of issue of new titles for the said lot I the sum of Dollars Three thousand six hundred and fifty ($3,650) now deposited by the purchaser with the vendor shall be forfeited."

When on August 1, 1957 the Solicitor for the defendant notified the plaintiff of the issue of the new title and required the plaintiff to deposit with him the balance within 14 days, the plaintiff requested to be allowed to pay the required deposit after he could recover some loan, but this was turned down and on September 3 he again wrote to the Solicitor asking for a further "6 months' time to 'settle' the amount." The following day the defendant's Solicitor gave notice that the defendant "exercises his rights under clause 2 of the agreement and the deposit is forfeited."

The plaintiff thereafter instituted this action claiming specific performance of the agreement and in the alternative $9,500 by way of damages.

Held: (1) the stipulation as to time for the subsequent deposit was of secondary importance to the main purpose of the contract;

(2) the condition as to subsequent deposit (of balance of the purchase price) pending completion and registration was required as further evidence of good faith;

(3) although a determinable date ostensibly obligatory was fixed for completion, the nature of the property is such that time for payment of the balance of the purchase price cannot be deemed to be of the essence of the contract;

(4) the purchaser's temporary inability to pay the balance within the stipulated time announcing the reasons for the delay did not constitute any impropriety on his part;

(5) the tender of the balance purchase price within 6 weeks was reasonable in the circumstances and there has been no undue delay;

(6) the purchaser was entitled to specific performance.

Cases referred to:—

(1) *Jamshed Khodaram Irani v. Burjorji Dunjibhai* (1916), 43 I.A. 26.

(2) *Smith v. Hamilton* (1951) 1 Ch. 174.

(3) *Green v. Sevin* 13 Ch.D. 589.

(4) *Re Barr's Contract* (1956) 2 All E.R. 853.

ACTION.

R. R. Chelliah for the plaintiff.

M. Edgar for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: This action arises out of an agreement in writing dated the 7th day of May, 1955, whereby the defendant, as the registered proprietor and beneficial owner of a piece of land comprised in E.M.R. No. 3624 Lot No. 2286, in the Mukim of Setapak, in the Town and District of Kuala Lumpur, agreed to sell and the plaintiff agreed to purchase a defined portion thereof containing an area of approximately 11,700 square feet described as Lot I, upon sub-division of the land into lots and issue